With respect to the IDS filed April 14, 1998, the Examiner acknowledges that the Chandani et al. article, "Antiferroelectric Chiral Smectic Phases Responsible for the Tristable Switching in MHPOBC" (Paper No. 14) has not been considered by the Examiner, and it is noted that "the Examiner will [reconsider] such papers when they are all located in [the] file" (page 4, Final Official Action). It is noted that under 37 CFR 1.98(d)(1), the Applicants are permitted to rely on an earlier submission of prior art in a parent application and that a copy of the Chandani article is available in a parent application, Serial No. 08/278,088, filed July 20, 1994, or Serial No. 08/592,672, filed January 26, 1996.

Therefore, pursuant to 37 CFR 1.98(d)(1), the Applicants respectfully request that the Examiner attempt to locate the Chandani article in the '088 or '672 application. If the Chandani article can be located by the Examiner in the '088 or '672 application, then the Applicants respectfully request that the Chandani article be considered by the Examiner, and that the Examiner provide an initialed copy of the Form PTO-1449 evidencing consideration of the above-referenced Information Disclosure Statement. If the Chandani article cannot be located by the Examiner in the '088 or '672 application, then the Applicants respectfully request that the Examiner indicate this fact in a subsequent communication.

In the *Advisory Action*, the Examiner does not acknowledge the above-referenced requests by the Applicants regarding the Chandani article. Therefore, the Applicants reiterate their requests at this time.

With respect to the IDS filed January 25, 2002, and partially considered August 13, 2002, the Examiner continues to assert that Serial No. 09/781,154 "has not consideration as prior art" (page 3, Final Official Action). It appears that the Examiner has fully considered the '154 application in connection with the subject application, but such consideration has not been indicated on the record. As noted in MPEP § 2001.06(b), the Applicants are under a duty of disclosure which includes copending applications. The Applicants respectfully submit that the IDS filed January 25, 2002,

including the reference to the '154 application, fully complies with 37 CFR 1.98 and should be considered by the Examiner. The Applicants recognize that the Examiner may have crossed through the citation to the '154 application on the Form PTO-1449 because he does not wish the '154 application to be printed on the face of the patent. If this is the case, the Examiner still must indicate that the '154 application has been considered. Therefore, the Applicants respectfully request that the Examiner at least provide a statement on the record that the '154 application has been considered by the Examiner.

In the *Advisory Action*, the Examiner again asserts that the '154 application "is not qualified as prior art" and notes again that "such cited art has been crossed-out and will not be printed on the face of the patent." Again, the Examiner has ignored the Applicants requests for his assistance on this matter. For the reasons stated below, it is not sufficient for the Examiner to merely cross through the above-referenced citations.

Whether or not the '154 application papers are themselves prior art is irrelevant to the Examiner's duty to consider information timely and properly submitted to the Office in accordance with 37 CFR 1.97 and 1.98 (see MPEP § 609) and Applicant's duty of disclosure (see MPEP § 2000). In the present case, the '154 application papers may discuss other references and may include information that is material to the patentability of the claims of the present invention, and the Applicant is required to submit such information to the Patent Office under the duty of disclosure (MPEP § 2000), which the Applicant has done in full accordance with 37 CFR 1.97 and 1.98. MPEP § 609 states clearly that "An information disclosure statement filed in accordance with the provisions of 37 CFR 1.97 and 37 CFR 1.98 will be considered by the examiner assigned to the application" (emphasis added). That is, an Examiner has a duty to consider all information disclosed to the Patent Office, whether such information is prior art or not.

The Examiner is invited to signify consideration of the '154 application papers in any manner deemed appropriate, preferably by placing initials next to the citation on Form PTO-1449, but such consideration may also be signified by making a statement

on the record in a subsequent communication with the Applicant, i.e. "The Examiner has considered the IDS filed January 25, 2002, including Serial No. 09/781,154." Due to the fact that the Examiner has elected to strike through the citation of the '154 application papers, it is unclear on the record whether the Examiner has considered the '154 application papers. Also, the Examiner's subsequent explanations of the situation also do not make clear whether the information contained in the '154 application papers have been considered as required by the Rules. Therefore, the Applicant again respectfully requests that the Examiner provide an initialed copy of the Form PTO-1449 evidencing consideration of the '154 application papers.

Claims 31-33, 38, 39, 46-51, 55-58, 65, 66, 83-94, 99, 106-110 and 115-135 are pending in the present application, of which claims 31-33, 55, 56, 99, 109, 116, 117 and 128 are independent. Claims 38, 39, 83-94, 99, 106-108, 116-119, 122, 123 and 128-132 have been withdrawn from consideration. Accordingly, claims 31-33, 46-51, 55-58, 65, 66, 109, 110, 115, 120, 121, 124-127 and 133-135 are currently elected, of which claims 31-33, 55, 56 and 109 are independent. For the reasons set forth in detail below, all claims are believed to be in condition for allowance. Favorable reconsideration is requested.

Paragraph 4 of the Official Action mailed December 22, 2003, rejects claims 31-33, 49-51, 55-58, 65-67, 69, 109, 110, 115, 120, 121, 124-127 and 133-135 under the doctrine of obviousness-type double patenting over claims 1-4 and 17-19 of U.S. Patent No. 5,594,569 to Konuma et al.

As stated in MPEP § 804, under the heading "Obviousness-Type," in order to form an obviousness-type double patenting rejection, a claim in the present application must define an invention that is merely an obvious variation of an invention claimed in the prior art patent, and the claimed subject matter must not be patentably distinct from the subject matter claimed in a commonly owned patent. Also, the patent principally underlying the double patenting rejection is not considered prior art.

The Applicants continue to respectfully traverse the obviousness-type double patenting rejection because the independent claims of the present invention are patentably distinct from the claims of Konuma. Specifically, independent claims 31-33, 55, 56 and 109 of the present invention recite a spacer which is distinct from the resin formed between the first and second substrates. Further, independent claims 55 and 56 of the present invention recite that the resin has a column shape.

At best, claims 1-4 and 17-19 of Konuma appear to teach that "means, comprising a resin, for decreasing an orientation regulating force of said orientation control means with respect to said liquid crystal layer is provided between said liquid crystal layer and said orientation control means in the form of a plurality of grains" (claim 1) and that "said resin is interposed between said liquid crystal layer and said orientation control means in the form of a film" (claim 3). However, claims 1-4 and 17-19 of Konuma do not teach or suggest a spacer at all, much less a spacer which is distinct from the resin formed between the first and second substrates. Also, claims 1-4 and 17-19 of Konuma do not teach or suggest that the resin has a column shape. Although the specification of the Konuma patent appears to teach a spacer 8 and resin 21, as stated above, the patent principally underlying the double patenting rejection is not considered prior art.

The Applicants respectfully submit that the subject application is patentably distinct from the claims of the Konuma patent. Reconsideration of the obviousness-type double patenting rejection is requested.

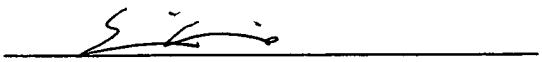
In the *Advisory Action*, the Official Action asserts that "column-shape resin" has not been recited in the claims. As noted above, claims 55 and 56 positively recite the above-referenced feature. The *Advisory Action* further asserts that "such limitation of 'spacer' would have been obvious to one skilled in the art to combine with 'column-shape resin' in the Konuma et al. ('569) device as shown by Applicants' submitted prior art, Shimizu et al., US 5739882" (page 2, Paper No. 051204). The Applicants respectfully disagree and traverse the above assertions.

Initially, it is noted that the Official Action or the *Advisory Action* has not made an obviousness rejection with respect to Konuma and Shimizu. Specifically, the Official Action or the *Advisory Action* has not shown why it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the device recited in the claims of Konuma with Shimizu.

Also, the *Advisory Action* continues to ignore the previous arguments presented by the Applicants. As noted above and previously in the *Amendment* filed April 22, 2004, the claims of Konuma do not teach or suggest a spacer at all, much less a spacer which is distinct from the resin formed between the first and second substrates. Also, the claims of Konuma do not teach or suggest that the resin has a column shape. Although the specification of the Konuma patent appears to teach a spacer 8 and resin 21, as stated above, the patent principally underlying the double patenting rejection is not considered prior art.

Should the Examiner believe that anything further would be desirable to place this application in better condition for allowance, the Examiner is invited to contact the Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,



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